

AMENDED IN SENATE MARCH 30, 2006

SENATE BILL

No. 1205

Introduced by Senator Escutia

January 25, 2006

An act to amend Sections 39674, 42400, ~~and 42402 of, and 42400.1, 42400.2, 42400.3.5, 42400.7, 42401, 42402, 42402.1, 42402.2, and 42402.4 of~~, to add ~~Section 42407.5 to~~, Sections 39604.3 and 42409.5 to, and to repeal Section 42400.4 of the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1205, as amended, Escutia. Air pollution: Children's Breathing Rights Act: penalties.

(1) Existing law vests local and regional authorities, defined as the governing body of any city, county, or air pollution control district or air quality management district with the primary responsibility for control of air pollution from all sources other than vehicular sources. Existing law establishes maximum criminal and civil penalties for any person, as defined, for violations of air pollution laws from nonvehicular sources. *Existing law defines a Title V source as a stationary source required by federal law to be included in an operating permit program established pursuant to Title V of the federal Clean Air Act.*

This bill would create the Children's Breathing Rights Act, which would increase the ~~civil~~ *maximum* penalties for specified violations of air pollution laws from nonvehicular sources ~~from \$1,000 to \$10,000, and to \$50,000 in the case of Title V sources, as provided. The bill would eliminate certain affirmative defenses and civil liability provisions relating to violations of air quality laws, as provided. The~~

bill would, on and after June 1, 2007, assess an additional civil penalty of not more than \$100,000 per day for each violation committed by a serious and chronic violator of nonvehicular air pollution laws, *as defined*. ~~The bill would require the State Air Resources Board, by March 1, 2007, to define, by regulation, the term “serious and chronic violator.”~~ The bill would require that ~~all moneys collected from serious and chronic violators pursuant to those provisions~~ *at least 10% of all penalties and settlements collected by the state board and the air districts from violators of specified laws regulating air pollution* be deposited into the Children’s Breathing Rights Fund, which would be created by the bill, to be used, upon appropriation, for specified purposes.

Because this bill would add new crimes ~~by, among other things, eliminating certain affirmative defenses to certain crimes~~, this bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as
- 2 the Children’s Breathing Rights Act.
- 3 SEC. 2. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) Breathing clean and healthy air is a right of all
- 6 Californians, especially our children, whose health suffers
- 7 disproportionately when our air is polluted.
- 8 (2) Reduced lung growth and function, new asthma cases,
- 9 respiratory complications for asthmatics, and increased school
- 10 absences from respiratory illnesses are just some of the
- 11 consequences our children face if we fail to protect that right.
- 12 (3) The most recent available state and federal data reveal that
- 13 more than 245 million pounds of industrial air pollution were
- 14 emitted near California schools in 1995. Statewide, more than 2.8

1 million children were enrolled in schools located near reported
2 air emissions of carcinogens, reproductive toxins, heavy metals,
3 nitrogen oxides, sulfur dioxide, or particulate matter.

4 *(4) Because air quality management districts and air pollution*
5 *control districts settle most violations in administrative hearings,*
6 *records of violations are not always kept at the local district level*
7 *and the districts thus have incomplete compliance histories.*
8 *Moreover, the state board is currently statutorily required to*
9 *post, on its Internet Web site, only summary information every*
10 *two years. Publicly accessible information regarding air*
11 *pollution is therefore inadequate.*

12 ~~(4)~~

13 *(5) If we improve the enforcement of our air quality laws and*
14 *ensure that penalties are not so low as to be a minor*
15 *inconvenience to a serious and chronic air polluter, our children's*
16 *right to clean and healthy air can be better protected, as can the*
17 *right to environmental justice provided in Section 65040.12 of*
18 *the Government Code, that is, the fair treatment of people of all*
19 *racess, cultures, and income with respect to the enforcement of*
20 *environmental laws, regulations, and policies. If we improve the*
21 *enforcement of our air quality laws, we will avoid future*
22 *economic and social costs of air pollution.*

23 *(b) It is the intent of the Legislature to increase penalties for*
24 *serious and chronic violators of air pollution laws and to use*
25 *those enhanced penalties to improve air pollution enforcement*
26 *activities, to create a statewide database that would provide*
27 *transparency regarding violations, including serious and chronic*
28 *violations, to help fund local children's health initiatives, and to*
29 *help fund asthma prevention activities in schools and local*
30 *communities.*

31 *SEC. 3. Section 39604.3 is added to the Health and Safety*
32 *Code, to read:*

33 *39604.3. (a) Notwithstanding Section 39604, the state board*
34 *shall post on its Internet Web site, at a minimum by January 1 of*
35 *each year, information on air quality violations in each district*
36 *that have occurred since the last annual report.*

37 *(b) The data shall include, but not be limited to, all of the*
38 *following:*

39 *(1) The district where the violation occurred.*

1 (2) *The name of the source, owner, or operator against whom*
2 *or which a penalty was assessed.*

3 (3) *The section of law or regulation found to have been*
4 *violated.*

5 (4) *The number of days the violation occurred.*

6 (5) *The total dollar amount of the civil penalty assessed.*

7 (6) *The amount of any fine and the length of any imprisonment*
8 *imposed as a criminal penalty.*

9 (7) *Whether any air district hearing board granted the*
10 *violating facility a variance, the duration of any variance, and*
11 *whether final compliance has been achieved.*

12 (8) *The issuance of orders for abatement, hearing board*
13 *findings, settlement agreements, consent decrees, and consent*
14 *agreements.*

15 ~~SEC. 3.~~

16 SEC. 4. Section 39674 of the Health and Safety Code is
17 amended to read:

18 39674. ~~Any~~(a) *Except as otherwise provided in subdivision*
19 *(b) or; any person who violates any rule or regulation, emission*
20 *limitation, permit condition, order, fee requirement, filing*
21 *requirement, duty to allow or carry out inspection or monitoring*
22 *activities, or duty to allow entry for which delegation or approval*
23 *of implementation and enforcement authority has been obtained*
24 *pursuant to subdivision (l) of Section 112 of the Clean Air Act*
25 *(42 U.S.C. Section 7412(l)) or the regulations adopted pursuant*
26 *thereto, adopted pursuant to Section 39659 or Article 4*
27 *(commencing with Section 39665) or which is implemented and*
28 *enforced as authorized by subdivision (b) of Section 39658 is*
29 *strictly liable for a civil penalty not to exceed ten thousand*
30 *dollars (\$10,000) for each day in which the violation occurs.*

31 (b) *Any person who violates any rule or requirement, emission*
32 *limitation, permit condition, order, fee requirement, filing*
33 *requirement, duty to allow or carry out inspection or monitoring*
34 *activities, or duty to allow entry for which delegation or approval*
35 *of implementation and enforcement authority has been obtained*
36 *pursuant to subdivision (l)) of Section 112 of the federal Clean*
37 *Air Act (42 U.S.C. Section 7412(1) or the regulations adopted*
38 *pursuant thereto, adopted pursuant to Section 39659 or Article 4*
39 *(commencing with Section 39665), or which is implemented and*
40 *enforced as authorized by subdivision (b) of Section 39658 at a*

Title V source is strictly liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each day in which the violation occurs.

(c) Where a civil penalty in excess of one thousand dollars (\$1,000) for each day of violation is sought, there is no liability under subdivision (a) if the person accused of the violation alleges by affirmative defense and establishes that the violation is caused by an act that was not the result of intentional or negligent conduct. In a district in which a Title V permit program has been fully approved, this subdivision shall not apply to a violation of federally enforceable requirements that occurs at a Title V source.

~~SEC. 4.~~

SEC. 5. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) (1) Except as otherwise provided in paragraph (2), or Section 42400.1, 42400.2, 42400.3, or 42400.3.5, ~~or 42400.4,~~ any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than six months, or both.

(2) *Notwithstanding paragraph (1) and except where a greater penalty is authorized by law, any person who violates this part, or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000), Part 2 (commencing with Section 39500), Part 3 (commencing with Section 40000), or Part 4 (commencing with Section 41500) at a Title V source is guilty of a misdemeanor and is subject to a fine of not more than fifty thousand dollars (\$50,000) or imprisonment in the county jail for not more than one year, or both.*

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent

1 contractor, as the case may be, causing the violation is guilty of a
2 misdemeanor and is punishable as provided in subdivision (a).
3 That liability shall not extend to the person employing the
4 employee or retaining the independent contractor, unless that
5 person is separately guilty of an action that violates this part.

6 (c) ~~Any~~ Except as provided in paragraph (2) of subdivision (a),
7 any person who owns or operates any source of air contaminants
8 in violation of Section 41700 that causes actual injury, as
9 defined in subdivision (d), to the health and safety of a
10 considerable number of persons or the public is guilty of a
11 misdemeanor and is subject to a fine of not more than ~~fifteen~~
12 ~~thousand dollars (\$15,000)~~ fifty thousand dollars (\$50,000) or
13 imprisonment in the county jail for not more than nine months, or
14 both.

15 (d) As used in this section, “actual injury” means any physical
16 injury that, in the opinion of a licensed physician and surgeon,
17 requires medical treatment involving more than a physical
18 examination.

19 (e) Each day during any portion of which a violation of
20 subdivision (a) or (c) occurs is a separate offense.

21 SEC. 6. Section 42400.1 of the Health and Safety Code is
22 amended to read:

23 42400.1. (a) ~~Any~~ Except as otherwise provided in paragraph
24 (2) of subdivision (a) of Section 42400, any person who
25 negligently emits an air contaminant in violation of ~~any provision~~
26 ~~of~~ this part or any rule, regulation, permit, or order of the state
27 board or of a district pertaining to emission regulations or
28 limitations is guilty of a misdemeanor and is punishable by a fine
29 of not more than twenty-five thousand dollars (\$25,000), or
30 imprisonment in ~~a the~~ county jail for not more than nine months,
31 ~~or by both that fine and imprisonment.~~

32 (b) Any person who negligently emits an air contaminant in
33 violation of Section 41700 that causes great bodily injury, as
34 defined by Section 12022.7 of the Penal Code, to, or death of,
35 any person, is guilty of a misdemeanor and is punishable by a
36 fine of not more than one hundred thousand dollars (\$100,000),
37 or imprisonment in ~~a the~~ county jail for not more than one year,
38 ~~or by both that fine and imprisonment.~~

39 (c) Each day during any portion of which a violation occurs is
40 a separate offense.

1 SEC. 7. Section 42400.2 of the Health and Safety Code is
2 amended to read:

3 42400.2. (a) ~~Any~~ Except as otherwise provided in paragraph
4 (2) of subdivision (a) of Section 42400, any person who emits an
5 air contaminant in violation of any provision of this part, or any
6 order, rule, regulation, or permit of the state board or of a district
7 pertaining to emission regulations or limitations, and who knew
8 of the emission and failed to take corrective action within a
9 reasonable period of time under the circumstances, is guilty of a
10 misdemeanor and is ~~punishable by~~ subject to a fine of not more
11 than forty thousand dollars (\$40,000), or imprisonment in a the
12 county jail for not more than one year, or ~~by both that fine and~~
13 imprisonment.

14 (b) For purposes of this section, “corrective action” means the
15 termination of the emission violation or the grant of a variance
16 from the applicable order, rule, regulation, or permit pursuant to
17 Article 2 (commencing with Section 42350). If a district
18 regulation regarding process upsets or equipment breakdowns
19 would allow continued operation of equipment which is emitting
20 air contaminants in excess of allowable limits, compliance with
21 that regulation is deemed to be corrective action.

22 (c) Any person who owns or operates any source of air
23 contaminants in violation of Section 41700 that causes great
24 bodily injury, as defined by Section 12022.7 of the Penal Code,
25 to, or death of, any person, and who knew of the emission and
26 failed to take corrective action within a reasonable period of time
27 under the circumstances, is guilty of a misdemeanor and is
28 ~~punishable by~~ subject to a fine of not more than two hundred
29 fifty thousand dollars (\$250,000), or imprisonment in a the
30 county jail for not more than one year, or ~~by both that fine and~~
31 imprisonment.

32 (d) Each day during any portion of which a violation occurs
33 constitutes a separate offense.

34 SEC. 8. Section 42400.3.5 of the Health and Safety Code is
35 amended to read:

36 42400.3.5. (a) ~~Any~~ Except as otherwise provided in
37 paragraph (2) of subdivision (a) of Section 42400, any person
38 who knowingly violates any rule, regulation, permit, order, fee
39 requirement, or filing requirement of the state board or of a
40 district, including a district hearing board, that is adopted for the

1 control of toxic air contaminants pursuant to Part 1 (commencing
2 with Section 39000) to Part 4 (commencing with Section 41500),
3 inclusive, and for which delegation or approval of
4 implementation and enforcement authority has been obtained
5 pursuant to subdivision (l) of Section 112 of the *federal* Clean
6 Air Act (42 U.S.C. Sec. 7412(l)), or the regulations adopted
7 pursuant thereto, is guilty of a misdemeanor and is subject to a
8 fine of not more than ten thousand dollars (\$10,000) or
9 imprisonment in the county jail for not more than six months, or
10 both.

11 (b) ~~Any~~ *Except as otherwise provided in paragraph (2) of*
12 *subdivision (a) of Section 42400, any person who knowingly*
13 *makes any false material statement, representation, or*
14 *certification in any form or in any notice or report required by a*
15 *rule or regulation adopted or permit issued for the control of*
16 *toxic air contaminants pursuant to Part 1 (commencing with*
17 *Section 39000) to Part 4 (commencing with Section 41500),*
18 *inclusive, and for which delegation or approval of*
19 *implementation and enforcement authority has been obtained*
20 *pursuant to subdivision (l) of Section 112 of the Clean Air Act*
21 *(42 U.S.C. Sec. 7412(l)), or the regulations adopted pursuant*
22 *thereto, or who knowingly renders inaccurate any monitoring*
23 *device required by that toxic air contaminant rule, regulation, or*
24 *permit is subject to a fine of not more than thirty-five thousand*
25 *dollars (\$35,000) or imprisonment in the county jail for not more*
26 *than nine months, or both.*

27 (c) ~~Any~~ *Except as otherwise provided in paragraph (2) of*
28 *subdivision (a) of Section 42400, any person who, knowingly and*
29 *with intent to deceive, falsifies any document required to be kept*
30 *pursuant to any provision of this part, or any rule, regulation,*
31 *permit, notice to comply, or order of the state board or of a*
32 *district, is punishable as provided in subdivision (b).*

33 (d) ~~Subdivisions (a) and (b) shall apply only to those~~
34 ~~violations that are not otherwise subject to a fine of ten thousand~~
35 ~~dollars (\$10,000) or more pursuant to Section 42400.1, 42400.2,~~
36 ~~or 42400.3.~~

37 *SEC. 9. Section 42400.4 of the Health and Safety Code is*
38 *repealed.*

39 ~~42400.4. (a) In any district where a Title V permit program~~
40 ~~has been fully approved by the federal Environmental Protection~~

1 ~~Agency, any person who knowingly violates any federally~~
2 ~~enforceable permit condition or any fee or filing requirement~~
3 ~~applicable to a Title V source is guilty of a misdemeanor and is~~
4 ~~subject to a fine of not more than ten thousand dollars (\$10,000).~~

5 ~~(b) In any district in which a Title V permit program has been~~
6 ~~fully approved by the federal Environmental Protection Agency,~~
7 ~~any person who knowingly makes any false material statement,~~
8 ~~representation, or certification in any form or in any notice or~~
9 ~~report required of a Title V source of a federally enforceable~~
10 ~~permit requirement, or who knowingly renders inaccurate any~~
11 ~~monitoring device or method required of a Title V source, is~~
12 ~~guilty of a misdemeanor and is subject to a fine of not more than~~
13 ~~ten thousand dollars (\$10,000).~~

14 ~~(c) The recovery of civil penalties pursuant to Section 42402,~~
15 ~~42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to~~
16 ~~this section for the same offense. When a district refers a~~
17 ~~violation to a prosecuting agency, the filing of a criminal~~
18 ~~complaint is grounds requiring the dismissal of any civil action~~
19 ~~brought pursuant to this article for the same offense.~~

20 ~~(d) Each day during any portion of which a violation of~~
21 ~~subdivision (a) or (b) occurs is a separate offense.~~

22 ~~(e) This section shall not become operative in a district until~~
23 ~~the federal Environmental Protection Agency fully approves that~~
24 ~~district's Title V permit program.~~

25 ~~(f) This section applies only to violations described in~~
26 ~~subdivisions (a) and (b) that are not otherwise subject to a fine of~~
27 ~~ten thousand dollars (\$10,000) or more pursuant to Section~~
28 ~~42400.1, 42400.2, or 42400.3.~~

29 *SEC. 10. Section 42400.7 of the Health and Safety Code is*
30 *amended to read:*

31 42400.7. (a) The recovery of civil penalties pursuant to
32 Section 39674, 42401, 42402, 42402.1, 42402.2, or 42402.3, ~~or~~
33 ~~42402.4~~ precludes prosecution under Section 42400, 42400.1,
34 42400.2, 42400.3, 42400.3.5, or 42400.4 for the same offense.
35 When a district refers a violation to a prosecuting agency, the
36 filing of a criminal complaint is grounds requiring the dismissal
37 of any civil action brought pursuant to this article for the same
38 offense.

39 (b) If the pending civil action described in subdivision (a)
40 includes a request for injunctive relief, that portion of the civil

1 action shall not be dismissed upon the filing of a criminal
2 complaint for the same offense.

3 *SEC. 11. Section 42401 of the Health and Safety Code is*
4 *amended to read:*

5 *42401. ~~Any~~ Except as otherwise provided in paragraph (2) of*
6 *subdivision (a) of Section 42400, any person who intentionally or*
7 *negligently violates any order of abatement issued by a district*
8 *pursuant to Section 42450, by a hearing board pursuant to*
9 *Section 42451, or by the state board pursuant to Section 41505, is*
10 *liable for a civil penalty of not more than twenty-five thousand*
11 *dollars (\$25,000) for each day in which the violation occurs.*

12 ~~SEC. 5.~~

13 *SEC. 12. Section 42402 of the Health and Safety Code is*
14 *amended to read:*

15 *42402. (a) Except as provided in Sections 42402.1, 42402.2,*
16 *42402.3, and 42402.4, any person who violates this part, any*
17 *order issued pursuant to Section 42316, or any rule, regulation,*
18 *permit, or order of a district, including a district hearing board, or*
19 *of the state board issued pursuant to Part 1 (commencing with*
20 *Section 39000) to Part 4 (commencing with Section 41500),*
21 *inclusive, is strictly liable for a civil penalty of not more than ten*
22 *thousand dollars (\$10,000).*

23 *(b) Notwithstanding subdivision (a) and except where a*
24 *greater penalty is authorized by law, any person who violates*
25 *this part, any order issued pursuant to Section 42316, or any*
26 *rule, regulation, permit, or order of a district, including a district*
27 *hearing board, or of the state board issued pursuant to Part 1*
28 *(commencing with Section 39000), Part 2 (commencing with*
29 *Section 39500), Part 3 (commencing with Section 40000), or*
30 *Part 4 (commencing with Section 41500) at a Title V source is*
31 *strictly liable for a civil penalty in an amount not more than fifty*
32 *thousand dollars (\$50,000).*

33 *(c) (1) Except as specified in paragraphs (2) and (3), if a civil*
34 *penalty in excess of one thousand dollars (\$1,000) for each day*
35 *in which a violation occurs is sought, there is no liability under*
36 *subdivision (a) if the person accused of the violation alleges by*
37 *affirmative defense and establishes that the violation was caused*
38 *by an act that was not the result of intentional nor negligent*
39 *conduct.*

1 (2) *This subdivision does not apply to a violation of federally*
2 *enforceable requirements that occur at a Title V source in a*
3 *district in which a Title V permit program has been fully*
4 *approved.*

5 (3) *This subdivision does not apply to a person who is*
6 *determined to have violated an annual facility emissions cap*
7 *established pursuant to a market-based incentive program*
8 *adopted by a district pursuant to subdivision (b) of Section*
9 *39616.*

10 ~~(b)~~

11 (d) Any person who owns or operates any source of air
12 contaminants in violation of Section 41700 *that causes actual*
13 *injury, as defined in subdivision (d) of Section 42400, to the*
14 *health and safety of a considerable number of persons or the*
15 *public, is liable for a civil penalty of not more than—fifteen*
16 *thousand dollars (\$15,000) fifty thousand dollars (\$50,000).*

17 ~~(e)~~

18 (e) Each day during any portion of which a violation occurs is
19 a separate offense.

20 *SEC. 13. Section 42402.1 of the Health and Safety Code is*
21 *amended to read:*

22 42402.1. (a) ~~Any~~ *Except as otherwise provided in subdivision*
23 *(b) of Section 42402, any person who negligently emits an air*
24 *contaminant in violation of this part or any rule, regulation,*
25 *permit, or order of the state board or of a district, including a*
26 *district hearing board, pertaining to emission regulations or*
27 *limitations is liable for a civil penalty of not more than*
28 *twenty-five thousand dollars (\$25,000).*

29 (b) Any person who negligently emits an air contaminant in
30 violation of Section 41700 that causes great bodily injury, as
31 defined by Section 12022.7 of the Penal Code, to any person or
32 that causes the death of any person, is liable for a civil penalty of
33 not more than one hundred thousand dollars (\$100,000).

34 (c) Each day during any portion of which a violation occurs is
35 a separate offense.

36 *SEC. 14. Section 42402.2 of the Health and Safety Code is*
37 *amended to read:*

38 42402.2. (a) ~~Any~~ *(1) Except as otherwise provided in*
39 *subdivision (b) of Section 42402, any person who emits an air*
40 *contaminant in violation of any provision of this part, or any*

1 order, rule, regulation, or permit of the state board or of a district,
2 including a district hearing board, pertaining to emission
3 regulations or limitations, and who knew of the emission and
4 failed to take corrective action, as defined in subdivision (b) of
5 Section 42400.2, within a reasonable period of time under the
6 circumstances, is liable for a civil penalty of not more than forty
7 thousand dollars (\$40,000).

8 (b) Any person who owns or operates any source of air
9 contaminants in violation of Section 41700 that causes great
10 bodily injury, as defined by Section 12022.7 of the Penal Code,
11 to any person or that causes the death of any person, and who
12 knew of the emission and failed to take corrective action, as
13 defined in subdivision (b) of Section 42400.2, within a
14 reasonable period of time under the circumstances, is liable for a
15 civil penalty not to exceed two hundred fifty thousand dollars
16 (\$250,000).

17 (c) Each day during any portion of which a violation occurs is
18 a separate offense.

19 *SEC. 15. Section 42402.4 of the Health and Safety Code is*
20 *amended to read:*

21 42402.4. ~~Any~~ *Except as otherwise provided in subdivision (b)*
22 *of Section 42402, any person who knowingly and with intent to*
23 *deceive, falsifies any document required to be kept pursuant to*
24 *any provision of this part, or any rule, regulation, permit, or order*
25 *of the state board or of a district, including a district hearing*
26 *board, is liable for a civil penalty of not more than thirty-five*
27 *thousand dollars (\$35,000).*

28 ~~SEC. 6.~~

29 *SEC. 16. Section 42409.5 is added to the Health and Safety*
30 *Code, to read:*

31 42409.5. (a) On and after June 1, 2007, any serious and
32 chronic violator shall be liable for a civil penalty of not more
33 than one hundred thousand dollars (\$100,000) per day for each
34 violation described by this article, in addition to any other
35 penalty prescribed by this article.

36 (b) *For the purposes of this section, “serious and chronic*
37 *violator” includes, but is not necessarily limited to, any person*
38 *who does any of the following:*

39 (1) *Purposely or knowingly disconnects or disables any*
40 *monitoring device or method required by an operating permit.*

1 (2) *Purposely or knowingly makes any false material*
2 *statement, representation, or certification in any form, notice,*
3 *statement, or report required in connection with a permit.*

4 (3) *Commits any one or more of the following high priority*
5 *violations, as that term is used in relation to the federal Clean*
6 *Air Act (42 U.S.C. Sec. 7401, et seq.):*

7 (A) *Fails to obtain a prevention of significant deterioration*
8 *permit.*

9 (B) *Violates an air toxic requirement that either results in*
10 *excessive emissions or violates operating parameter restrictions.*

11 (C) *Violates an emissions limit.*

12 (D) *Violates any substantive term of an administrative or*
13 *judicial order.*

14 (E) *Commits substantial violations of a source's Title V*
15 *obligations.*

16 (F) *Fails to submit a Title V permit application within 60 days*
17 *of the deadline.*

18 (G) *Commits testing, monitoring, reporting, or record keeping*
19 *violations that substantially interfere with enforcement or a*
20 *determination of a facility's compliance requirements.*

21 (H) *Violates an allowable emission limit detected during a*
22 *source test.*

23 (I) *Commits substantial violations of the requirements of*
24 *subdivision (r) of Section 112 of the federal Clean Air Act (42*
25 *U.S.C. Sec. 7412(r)).*

26 (c) *At least 10 percent of all penalties and settlements*
27 *collected by the state board and the air districts from violators of*
28 *any provision of this division shall be deposited into the*
29 *Children's Breathing Rights Fund, which is hereby created in the*
30 *State Treasury. Moneys in the fund shall be available, upon*
31 *appropriation by the Legislature, for all of the following*
32 *purposes:*

33 ~~(b) On or before March 1, 2007, the state board shall adopt, by~~
34 ~~regulation, a definition of the term "serious and chronic violator"~~
35 ~~for the purposes of this section. In determining the definition of a~~
36 ~~serious and chronic violator, the state board shall consider all of~~
37 ~~the following:~~

38 ~~(1) The magnitude of the violation.~~

39 ~~(2) The scope of the violation.~~

40 ~~(3) The severity of the violation.~~

1 ~~(4) The degree to which a violation jeopardizes the~~
2 ~~environment or human health, safety, or welfare.~~

3 ~~(5) The degree to which a violation contributes to the failure to~~
4 ~~accomplish goals or program objectives set by the state board.~~

5 ~~(6) The degree to which a violation makes it difficult to~~
6 ~~determine if the violator is in compliance with other air quality~~
7 ~~laws, rules, or regulations.~~

8 ~~(e) All moneys collected from any serious and chronic~~
9 ~~pursuant to this section violator shall be deposited into the~~
10 ~~Children's Breathing Rights Fund, which is hereby created in the~~
11 ~~State Treasury. Moneys in the fund shall be available, upon~~
12 ~~appropriation by the Legislature, for the following purposes:~~

13 ~~(1) Twenty-five percent shall be allocated to the district where~~
14 ~~the penalty was assessed for enhanced enforcement activities in~~
15 ~~the district within close proximity to where those violations~~
16 ~~occurred, including monitoring; and reporting the development~~
17 ~~of pollution control technology, and providing assistance to~~
18 ~~serious and chronic air polluters, and developing and maintaining~~
19 ~~on the state board's Internet Web site a searchable database~~
20 ~~containing, at a minimum, the information specified in Section~~
21 ~~39604.3.~~

22 ~~(2) Fifty percent shall be allocated to local children's health~~
23 ~~initiatives in the district where the penalty was assessed to ensure~~
24 ~~basic health coverage, including asthma services in schools and~~
25 ~~communities. If there is no local children's health initiative in the~~
26 ~~district where the penalty was assessed, the allocation shall be~~
27 ~~made to the California Healthy Kids Insurance Program,~~
28 ~~established by Senate Bill 437 of the 2005–2006 Regular Session~~
29 ~~of the Legislature.~~

30 ~~(3) Twenty-five percent shall be allocated to the state board~~
31 ~~for enforcement of this article, including monitoring, the~~
32 ~~development of pollution control technology, providing~~
33 ~~assistance to serious and chronic air polluters, and auditing~~
34 ~~enforcement activities by districts.~~

35 ~~(3) Twenty-five percent shall be allocated to the appropriate~~
36 ~~local, city, or county agencies to ensure that the most egregious~~
37 ~~violators of this division are prosecuted for their violations.~~

38 ~~(e)~~

39 ~~(d) On or before January 1, 2008, and annually thereafter, the~~
40 ~~state board shall submit a report to the Legislature summarizing~~

1 the enforcement of this article, including auditing by the state
2 board of enforcement activities by district.

3 ~~SEC. 7.~~

4 *SEC. 17.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the
9 penalty for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition of a
11 crime within the meaning of Section 6 of Article XIII B of the
12 California Constitution.